In the Supreme Court of the United States.

OCTOBER TERM, 1897.

MANUEL CRESPIN ET AL., APPELLANTS, v. THE UNITED STATES. } No. 6.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT, ABSTRACT, AND BRIEF.

On the 12th day of August, 1892, MANUEL CRESPIN and others instituted suit in the Court of Private Land Claims for the confirmation of what is commonly known as the SAN ANTONITO GRANT, situated in Bernalillo county, territory of New Mexico, and alleged to contain thirty-two thousand acres. The plaintiffs claimed said grant as the heirs and legal representatives of the original grantees, and it is alleged in the petition that on the 24th of March, 1840, the republic of Mexico, through Antonio Sandoval, the prefect of the district of Bernalillo, thereunto duly authorized by the laws, usages, customs, superior orders, and decrees of the republic or of its duly

constituted and competent authorities, donated, adjudicated, granted, set apart, and delivered the possession unto Dionicio Atencio and twenty others named therein, of that certain tract of land situated in and upon the Cañon of San Antonito, surrounding the *placita*, place, or town of San Antonito, about twenty-five miles east of the city of Albuquerque; that the original grant document or *expediente* of title remained in the office and formed a part of the archives of said prefect of the district of Bernalillo; that the *testimonio* or official copy was at the time delivered unto the grantees and served them as evidence of a complete, valid, and final title in fee.

It is further alleged that, notwithstanding they have made diligent search therefor, they are unable to find the original *expediente* of said grant, from which the alleged official *testimonio* was taken; it is also alleged that the original *expediente* formed a part of the public archives from the date of said grant until the territory became a part of the United States, and that at divers and various times thereafter large portions of the same were lost, destroyed, or stolen, including the said *expediente*, wherefore they are unable to produce the same or a record thereof in court. It is further alleged that the *testimonio* or official copy of the *expediente* remained in the possession of said grantees and their legal representatives until about ———, when the same was lost or stolen, and notwithstanding diligent inquiry and search therefor they have been unable to find the same.

It is further alleged that on the 10th day of April, 1840, while the said *expediente* was in the archives of the prefecture of the said district of Bernalillo, a *testi-*

monio or true copy thereof was made, purporting to be for and the property of one Rumaldo Chavez, which alleged copy is filed with the petition as Exhibit A. (R., 6–9.) That said copy was prior to 1846 transferred and delivered by said Rumaldo Chavez, by endorsement thereon, unto Gaspar Atencio, one of the grantees of said grant, for his uses and purposes, and has ever since remained in the possession of the said Atencio and his legal representatives and the petitioners.

That on the 25th day of October, 1886, the petitioners filed the same in a complete, perfect, and intact condition, for record in the recorder's office of the county of Bernalillo, New Mexico, but that after filing the same and prior to the record thereof made December 28, 1886, and while the same was in the possession of said office, about one-half of the last half of the last folio or sheet of said document was lost, and the said record was made exclusive of said lost portion, wherefore plaintiffs are obliged to present and file the same minus the portion lost, as aforesaid, and will upon the trial of the cause, being allowed thereto, prove the contents of said lost portion of said instrument. (*Note:* This lost portion was found subsequently to the filing of the petition and filed as fragmentary portion of Exhibit "A" [R., 15]. The allegations of the petition with reference to the contents of this fragment it is unnecessary to notice, as, as has been stated, the same has now been found.)

It is further alleged in said petition, upon information and belief, that the grant was finally confirmed and approved by governor Manuel Armijo and the departmental assembly; that on the 4th day of March, 1840, under

and by virtue of said donation, adjudication, and grant, the designation of the exterior boundaries and the allotment of one hundred varas running from the north to the south boundaries of said grant in severalty to each of said grantees, the laying out and measuring of the *placita* of said town of San Antonito, and the allotment to each of said grantees of a lot in severalty therein, was all had, made, and done, and the juridical possession of the whole thereof given unto the said grantees by José Trujillo, under and in accordance with the decree of said prefect, and the superior orders, laws, customs, and usages then obtaining and in force in said territory; that said grantees obtained the grant and the possession thereof in good faith, and they and their descendants and legal representatives (the petitioners) from the date of said grant and said juridical possession thereof up to the present time have usefully held and occupied and possessed the same, and the whole thereof, under and by virtue of said grant and the said juridical possession thereof, and that they now hold, occupy, and possess the same in fee against the whole world under and by virtue of said grant, openly and notoriously; that the said tract is about ten miles in length by about five miles in width, containing about thirty-two thousand acres.

With said petition is filed a sketch map of said grant, marked Exhibit "C." (*Note.*—By some oversight in making up this transcript, a copy of this sketch map was omitted.)

With said petition is filed, as Exhibit "B" (R., 14), a *hijuela* or certificate of ownership of one hundred *varas* of land in San Antonito, given on April 11, 1840.

It is further alleged that the petitioners are entitled to the land, not only by virtue of said grant, but by virtue of their continuous use, occupation, and possession of said premises under a claim of right thereto from the year 1840 up to the present time, and that the same was at the date of the acquisition of New Mexico by the United States held discharged of any condition, charge, or reservation, if any there was, and that the same was further assured to them by reason of their continuous, exclusive, open, and notorious use and occupation since the date of said grant in 1840.

That the form of said grant title is a written document, comprehending and showing all the steps and proceedings in the matter, which was duly executed and authenticated in accordance with the laws, superior orders, usages, and customs, when obtaining in the territory of New Mexico, and was in nature a complete, definitive town-community grant in fee simple; that there are no adverse claimants, holders, or possessors of the same, nor does it conflict with any other grant or claim derived from the Mexican or Spanish government; that the same was never presented to or acted upon by any constituted authorities of the United States. The petition concludes with the usual prayer for relief. (R., 1–6.)

The answer of the United States avers want of knowledge or information sufficient to enable it to form a belief as to whether on the 24th day of March, 1840, Antonio Sandoval was a prefect of the district of Bernalillo, and whether upon said day, pretending to act for the Mexican republic, he undertook to grant, set apart, and deliver possession of said grant, but it avers that if he did so,

it was without warrant or authority of law, and denies that the original *expediente* ever formed a part or parcel of the public archives of the territory of New Mexico and the republic of Mexico. It avers want of knowledge or information as to whether on the 10th day of April, 1840, while an alleged proof of said grant was in the archives of said prefecture, a true copy thereof was made purporting to be for and the property of one Rumaldo Chavez, but says that if such were the case, said archives of the prefecture were not the proper repository as provided by law for grants of public lands by the Mexican republic, and that the copy or certification thereof was without warrant or authority of law and imports no verity to said copy.

It further avers want of information as to whether said copy was, prior to 1846, transferred and delivered by said Chavez by indorsement thereon unto Gaspar Atencio, one of the original grantees, and as to whether the same has ever remained in the possession of said Atencio and his legal representatives, the petitioners. It is averred that the boundaries set out in said petition for said alleged grant were never authorized to be designated or defined for the lands alleged to have been petitioned for or granted, and that the said prefect never attempted to grant and never did grant the lands embraced within the boundaries set out in said petition, and denies that juridical possession was ever given to the lands described in plaintiffs' petition under and by virtue or the directions or orders of said prefect or anyone else, and denies that said alleged grant or any part thereof or any

act performed thereunder ever received the approval and confirmation of governor Manuel Armijo and the departmental assembly or anyone else lawfully authorized thereto.

It avers want of information as to whether or not on the 4th day of March, 1840, an allotment was made in severalty to each of said alleged grantees, and if the same was so made it was without warrant or authority of law and void, or as to whether the said alleged original grantees and their legal representatives have, since the alleged grant and delivery of possession to them, been in the actual, exclusive, and notorious possession of the same. It denies that said prefect ever granted said land to anyone in the quantity of thirty-two thousand acres, and denies that the tract alleged to have been granted by said prefect is ten miles in length by five miles in width; denies that the plaintiffs herein are or ever have been seized and possessed of the same by title in fee simple; denies that at the date of the acquisition of New Mexico by the United States the grantees or their legal representatives held the same discharged of any condition, charge, or reservation, and denies that by reason of said possession, if any they had since 1840, they have acquired any interest therein, either legal or equitable, and denies that whatever muniments of title may have been delivered to said alleged grantees, if any, were executed and delivered by anyone authorized by law to dispose of the public domain of the republic of Mexico, or that the same was ever recorded in the proper archives as required by law, and prays the rejection of the grant. (R., 12–14.)

It will be noticed from the allegations of the petition that this is to be classed under the head of what is commonly known as town or community grants.

Plaintiffs offered in evidence Exhibit "A," including the fragment. (R., 15.) To this objection was made on behalf of the United States, upon the ground that no connection was shown between the instrument and archives, nor was the instrument in any wise verified, and on its face shows that under the law the officer making the same had no authority to dispose of the public lands of Mexico, and also because it is but a copy of a copy, and uncertified by officials who had the custody under the law of grants and muniments of title derived from the republic of Mexico to lands in New Mexico, and that the whole of Exhibit "A" is only the act of inferior officials of the prefecture, none of which acts are authorized by the laws of Mexico without an original grant by the governor, and also for the reason that this land appears to have been granted prior to 1840 to Cristobal Armijo, and no proceeding of abandonment was shown to have ever been taken to forfeit the land to the government, making it subject to regrant. (R.,16–17.)

It appears by this instrument that on March 16, 1840, Juan José Garcia and Gaspar Atencio, residents of Albuquerque, petitioned the prefect, Antonio Sandoval, stating that they and their constituents finding themselves without tillable land upon which to subsist, and there being back of the Sandia mountain a tract called the San Antonito, the fertility of which and the increase of its waters all invite cultivation, and by this means the commendable promotion of agriculture and the progressive

benefit of the petitioners will be accomplished, stating the fact that it is fifteen years, a little more or less, since said tract was donated to Cristobal Jaramillo, deceased, yet moreover, in all this space of time the land had not been cultivated at all, "and if this has been forfeited in accordance with our laws we humbly beg your Honor to be pleased to grant us what we ask, as it is without prejudice to a third party, etc." (R., 6.)

At Barelas on March 21, 1840, prefect Sandoval made an order to the justice of the peace of Los Ranchos to report thereon. (R., 6–7.)

On March 22, 1840, José Trujillo, the justice, filed his report stating that after having fully informed himself, it is fitted for agriculture, very pleasing and very delightful for a life of tranquillity, and very favorable to everything most necessary for a favorable living. In relation to the need of the petitioners of land and property that may fully provide them with subsistence, he says that excepting Diego Garcia, José Miguel Griego, and Juan Lucero, who are known to have land, but they do not count upon it because they are indebted and have it secured by said lands, all the others have not such property. (R., 7.)

Upon this report the prefect makes the following endorsement:

"Barelas, *Mar. 24, 1840.*

"One of the most commendable and beneficial things to a people being the promotion of agriculture, let this petition be transmitted to the justice of the peace of Los Ranchos, in order that with all the customary formalities he give the possession solicited by the parties in interest, without prejudice to a

third party, and only for cultivation the lands necessary, *leaving free the pastures and watering places* which under no circumstances ought to be interfered with; and after this is done, he shall make a full report to this prefecture." (R., 7.)

In obedience to this decree, the alleged act of the justice of the peace is as follows:

In the jurisdiction of Los Ranchos de Albuquerque on the 27th day of the month of March, of the year one thousand eight hundred and forty, I, the citizen José Trujillo, justice of the peace of the same jurisdiction, in virtue of what is ordered by the prefect of this district in decree of the twenty-fourth instant, and in obedience thereto, in order to proceed in all things in compliance therewith and according to and as therein set forth, I ought to, and I do, order that notice be given to citizens Juan José Garcia and Gaspar Atencio, with all their constituents, grantees in the tract of San Antonito, that by the twenty-ninth day of the present month they shall assemble at the place designated and donated to make the measurements of the said tract, and, there being no opposition, the possession thereof will be given them as is ordered by the prefect in the decree already cited, and they are made grantees in accordance with law.

I, the present justice, by this decree thus provided, ordered and signed it, acting as a special justice with the two attending witnesses for lack of a notary public, of which there is none provided by law, to which I certify.

Immediately in said jurisdiction of Los Ranchos de Albuquerque, on said day, month, and year, I, the said justice of the peace, in virtue of what is ordered in the foregoing decree, cited and made known

to the citizens Juan José Garcia and Gaspar Atencio, and their associates personally, everything that is therein set forth, which they understood, and I signed it, to which I certify, with those attending as aforesaid.

At the Rito de San Antonito, on the twenty-ninth day of the month of March, of the year one thousand eight hundred and forty, complying with what has been decreed by the prefect, Don Antonio Sandoval, with the object of giving the possession referred to in these proceedings, and all the grantees being present, I took Juan José Garcia and Gaspar Atencio by the hands, saying to them that in the name of the Mexican nation (which may God preserve), I gave national and personal possession of said tract for cultivation, to them and all their constituents, without prejudice to the public, as to pastures and watering places. I conducted them over said tract, they pulled up grass, threw stones, and made other signs and demonstrations of possession, in which act the parties placed in possession, as well as the bystanders who were present, shouted, saying, "Long live the Mexican nation! Long may it live! Long may it live!" and they placed the tract under the sole possession of Saint Anthony (San Antonio), as it had previously been, with which they quietly and peaceably took their possession, and the measurement of the land among the grantees was proceeded with in the following manner:

(Here follows a list of twenty-seven names, with the number of *varas* allotted to each, being one hundred, save to Juan José Garcia and Gaspar Atencio, who received one hundred and fifty *varas*, aggregating in all two thousand eight hundred *varas*.)

The number of Castilian *varas* divided among twenty-seven individuals, who were the grantees,

being two thousand eight hundred, as appears from the foregoing statement, the fixed boundaries being where the sources of the water raise, which is on the west side, on the east the twin pine (*pino cuate*) to the little pass (*puertecito*) of the Los Huerteños, commonly so called, it being diagonally between east and south, and the twin pine itself being recognized as a boundary mark, and a mound of stones that was piled around the pine itself, which is on the north side, and the little pass of Los Huerteños is on the south side. In this the land is included by the said sides. On the north side the little ridge (*cuchillita*) which is opposite, and it ends in the vicinity of a thick cedar tree with a natural girdle upon it, to which was given as a further sign, a cross made on the tree itself, it being diagonally between north toward the twin pine. On the south side the face of the top of the ridge called the Jaspe, recognizing as a boundary mark a large rock (*peñasco*) which is in a straight line with the end of the little ridge mentioned on the north side, said possession being enclosed on the south side (torn) the said ride of the Jaspe and—

(Here follows the note of the clerk in making up the transcript: "Here nearly three-quarters of a page left blank.")

(I insert the fragmentary portion of this document, which was missing at the time of the filing, and has since been found [it will be found in R., 15], and is as follows:)

"* * * easements, with warning to all the new settlers on this land that they have no right to close the pastures and watering places, nor to obstruct the roads already made within their lines, under penalty of losing the land if they should do so, nor to go beyond the limits designated." * * *

The present justice, with those of his attendance, by his decree thus provided, ordered and signed it as aforesaid.

It is a copy made from its original to-day, the tenth of April, one thousand eight hundred and forty, belonging to Don Rumaldo Chavez.

RUMALDO CHAVEZ. (Scroll.)

I have copied this alleged act of possession in full, placing the detached fragment in its proper place, so that the form of the instrument may fully appear. (R., 7, 8, 9, and 15.)

From this act of possession it appears that on March 27, 1840, Trujillo, the justice, ordered that notice be given to Juan José Garcia and Gaspar Atencio and their constituents, grantees in the San Antonito, that on the 29th day of that month they should appear at the place designated and donated to make the measurements of the tract, and there being no opposition possession thereof would be given them as ordered by the prefect, and they made grantees in accordance with law; that on said day, the parties being assembled, including Juan José Garcia and Gaspar Atencio, he made known to them everything contained in the decree, which they all understood, and complying with what had been decreed by the prefect Sandoval, with the object of giving the possession referred to in this proceeding, and all the grantees being present, he took Juan José Garcia and Gaspar Atencio by the hand and in the usual form gave them national and personal possession of the tract to cultivate, *without prejudice to the public as to the pastures and watering places*, and they all being satisfied the

measurement of the land was proceeded with, allotting to each of twenty-five grantees one hundred *varas*, and to Juan José Garcia and Gaspar Atencio one hundred and fifty *varas*, in all allotting to the twenty-seven persons two thousand eight hundred *varas*. Then follows a statement fixing the boundaries within which the allotments were made; following this is the detached fragment which is found on R., 15.

It will be noticed that this copy was not made by Francisco Sarracino, the secretary of the prefect Sandoval, but by Rumaldo Chavez, the clerk of the justice Trujillo [see the testimony of Ramon Samora (R., 37)], and appears to have been made for the personal use of said Chavez and afterwards transferred by endorsement on the back thereof to Gaspar Atencio, who appears from the document to have been one of the leading petitioners and received according to the allotment one hundred and fifty *varas*. This endorsement is peculiar in its language, and is as follows:

> This copy is transferred in favor of the citizen Gaspar Atencio, belonging solely to him the right to make such uses of it as he may deem fit, as he has given me his money for it; and I, the undersigned, obligate myself, if at any time a doubt should arise as to whether this is an exact copy of the original grant which is in the office of the prefect, to pay him the damages which it may cause him.

This endorsement is incomplete, as the concluding portion has been torn off, and it is alleged in the petition (paragraph 7) that this endorsement was made prior to 1846, although there is nothing in the record to sustain this allegation.

Plaintiff next offered in evidence an *hijuela*, or certificate of allotment (Exhibit "B") which was executed on April 11, 1840, by José Trujillo (R., 14), purporting to show an allotment of one hundred *varas* of land at San Antonito to Vicente Samora under the decree of prefect Sandoval. Plaintiff offered as Exhibit "D" a notice to the United States attorney of his intention to refer to certain acts of congress confirming various alleged prefect grants. (R., 15.)

To further sustain the allegations of the petition, plaintiff called as a witness MANUELITA MARTINEZ, who testified that she resided at Antonito, in Bernalillo county; that she knows there was a grant made to herself and others of land at San Antonito, and as one of the grantees she received one hundred *varas* in the year 1840 from José Trujillo, the justice; remembers some of the names of the grantees, but does not remember who petitioned for the grant, but that some men got a certificate to show they had a grant, but does not remember who they were.

She also testified as follows:

> Q. Does she know who they came to see at Santa Fé, if anyone?—A. Don Manuel Armijo.
>
> Mr. REYNOLDS. The petition for the grant and the grant will show for itself, and it shows nothing of the kind.
>
> Q. Who was Don Manuel Armijo?—A. He was the governor; he was from Albuquerque.
>
> Q. Did they get anything from the governor; did they get any written document and written grant?
>
> By the COURT. Change the question.

Q. Did they obtain anything, and if so, what, from the governor?—A. They obtained it to be granted, and the paper went to the prefect.

Q. To what prefect?—A. Don Antonio Sandoval. (R., 18.)

Witness testified that she was twenty-seven or twenty-eight years old when the possession was given, and has lived there ever since. The sons of the grantees, whom she named, live there at the present time. (R., 17–19.)

JUAN OTERO testified on behalf of the plaintiffs that he was fifty-five years old and has lived at San Antonito thirty-six or thirty-seven years, and there are about sixty heads of families, or about three hundred people in all. Exhibit "A" was shown the witness, who says he knows it and it is the grant of San Antonito, and has known it for about twenty-five years, it being in the possession of Ramon Samora, one of the grantees, and that he obtained it from Juan José Garcia, one of the grantees. He never knew but had heard of one Gaspar Atencio, who, he says, died, and his family lives at Los Candelarios. He knows of another paper relating to the grant, which he identifies as the *hijuela* or certificate of allotment given by Trujillo to Vicente Samora, whose sons are living at San Antonito, and he knew him when he first went there; that the claimants took the paper away from the heirs of Vicente Samora and placed it in the hands of the attorney. He states that he knows the grant was given in 1840, but he knew it only from the grantees themselves in possession. The only instrument he has ever seen relating to the grant were the alleged copy of the *expediente*, and Exhibit "B," the *hijuela*.

Knew Antonio Sandoval, who was a prefect and lived at Los Barelas; knew of his house being destroyed by fire, and that some of the records of the country were therein lost, but what he does not know. The remainder of the testimony of this witness is with reference to the boundaries of the grant. The cross-examination shows that the only knowledge this witness possesses with reference to the grant is hearsay. (R., 19–23.)

GREGORIO GARCIA testified on behalf of the plaintiffs that he was fifty-nine years old and has lived at San Antonito for about thirty years. Upon Exhibit "A" being shown to him, he said he did not know how to read but he knows the paper, and it is an *hijuela*. He says the people claimed the land at San Antonito; he has an interest in the same and bought it from Manuel Crespin, it being sixty *varas*; says the other people at San Antonito hold their land by purchase from Don Serafin. (R., 23–24.)

MANUEL CRESPIN testified on behalf of the plaintiffs that he was fifty-three years of age, a resident of San Antonito since 1863, and owns four hundred *varas* of land there, obtaining it from the original grantees. Exhibit "B" was shown the witness, who says he has known it since 1863. It was in the possession of Vicente Samora. Exhibit "A" was shown the witness, who says he knows it, and that it is a copy taken from the original grant of San Antonito, and he has known it since 1863, first seeing it in the hands of Ramon Samora at San Antonito, who he says is still living at San Antonito. Witness states that the

original was left in the office of Antonio Sandoval by the authorized persons, Gaspar Atencio and Juan José Garcia, about the year 1840. He has heard from the owners that the archives were burned at Albuquerque. Knew Antonio Sandoval who lived at Los Barelas. He understood it was the office of the prefecture that was destroyed at Albuquerque, and the destruction took place in 1854 or 1857. He has made diligent search for the documents. He does not know whether Exhibit "A" was compared with the original or not, but supposes it must have been, because the petitioners told him they left the true original in the house of Antonio Sandoval. Knows the boundaries of the grant from Vicente Samora, Bartolomé Sanches, and Ramón Samora. There are about three hundred people living within the grant and claiming it. The tract is about ten miles from east to west and five miles from north to south. Says there is some difference in the paper now than when he first saw it, there being a piece missing. In 1857 it was taken to the prefecture for record and left at the office. The piece was lost subsequent to that time. He does not remember what the piece contained, as he could read very little of this ancient manuscript writing, but thinks it contained the signatures of the officers and the connection of the boundary lines, but does not remember whether it contained anything else. Knew Antonio Sandoval from 1854 to 1861. Knew Sandoval was an official from the records. Understood that governor Armijo issued an order to Sandoval to give the grantees the land, but knows this only from the older people. Understood this order from

Armijo to Sandoval must have been in writing, and that Gaspar Atencio and José Garcia carried the order to Sandoval.

On cross-examination, witness affirms the fact of taking Exhibit "A" to Albuquerque in 1857 to have it recorded. When getting ready to file the case in the Court of Private Land Claims, they got together and discussed the papers and sent for their lawyers. They found they did not have the original and they talked about the condition of the title papers, and told the lawyers that they had title from the governor, and they told them they had better search and account for it. They discussed among themselves that they must have a grant from the governor and they had looked for the same, although they understood from the grantees that it had been destroyed. He understood Exhibit "A" to be a copy of the original, and that it was a copy of the grant from the governor, and that it is a copy of the one which it was said they came to Santa Fé to get. They never claimed that they had any other paper except this original from which this copy was made. (R., 24–31.)

J. Francisco Chavez testified on behalf of the plaintiffs that he was fifty-nine years of age and a prominent man in the territory. Knew Antonio Sandoval, and remembers the destruction of his house; also the destruction of the archives of the prefecture, as well as the destruction of certain archives of the territory of New Mexico; also the loss and destruction of Book B. (*Note:* This Book B was a record of the government of the United States, and kept under an order made by

general Kearny when in charge as military governor of the territory, and was not a part of the Spanish or Mexican archives.) (R., 31–34.)

Ramón Zamora testified on behalf of the plaintiffs that he was seventy-nine years of age, lives at San Antonito, and was one of the original grantees; thinks official possession was given them of this grant by the government, because a man was sent to Santa Fé to ask for it, and following it partition was made. The first one measured out was Dionicano Atencio; measurements were made by José Trujillo, the judge, who resided at the *rancho* at Albuquerque. He says the judge in making the measurements and giving the possession did not define the boundaries. Common lands were given and designated and to these the boundaries were shown, which he states. When the judge gave possession of this land, he gave a title paper, from which a copy was taken to be kept by them, and the original remained in the power of Antonio Sandoval, who was a rich man living at Los Barelas, and was prefect. Does not know what became of the original. It remained with Sandoval, and that was the reason copy was given to them, which copy he states they now have. Subsequently they could not find the original on account of the burning of Sandoval's house. Witness states that Rumaldo Chavez was the son-in-law of the justice José Trujillo, and that Chavez was only the clerk of the justice; that he is now dead, and Trujillo is dead; that Vicente Samora, his brother, lived at San Antonito in 1840 and was one of the original grantees, and that he gave a certificate or *hijuela* to

Vicente Samora, and he gave each of them certificates that they might know their lands partitioned to them, and the town was called San Antonito. The tract was given in common. He does not believe that there are any persons living upon the grant who are not descendants of the original grantees with the exception of one woman.

On cross-examination the witness testifies with reference to the boundaries of the grant. On redirect examination he testified that Sandoval was prefect when he made the grant, and that the authority he had therefor was an order from Santa Fé. "Maybe he was ordered from Santa Fé to make the grant." Says he believes the order came from Santa Fé because some men went up there for it; after that the land was partitioned. The men who went to Santa Fé were Gaspar Atencio and Juan José Garcia, who were grantees and received land in partition. Some of their descendants are living, but none of them on the grant. On recross-examination he testified that he knew Sandoval personally; had had conversation with him with regard to making this grant, and that he told him he had authority as prefect to make it. This was at the time partition was made. This conversation occurred at the house of Sandoval at Barelas. He did not show him any written authority from the governor of New Mexico, but simply told him he had authority to make the grant. (R., 35–40.)

The grant in this case was rejected by the Court of Private Land Claims upon the ground that a prefect had no authority under the laws of Mexico, as they existed in 1840, to initiate a grant for any purpose of lands of the republic, whether that grant should be an individual one or intended for the establishment of a town or community. Nothing appears in the record to show that the alleged acts of the prefect, Sandoval, and the justice of the peace, Trujillo, ever received the approval or sanction of any superior authority of the republic of Mexico. It can hardly be contended that the grant in this case was other than what is commonly designated a town or community grant, and it falls clearly within the decisions of this court in the cases of *United States* v. *City of Santa Fé* (165 U. S., 675) and *United States* v. *Sandoval et al.* (167 U. S., 278), San Miguel del Bado grant, decided at the last term of this court. In order for the twenty-seven allotments at San Antonito to be valid there must have been some order from the superior authorities, setting apart the district of country for the establishment of a town or community, and authorizing some official or official body to place the parties in possession and make the allotments, as is clearly shown in the Sandoval case and in the Las Vegas grant, therein referred to, so that the allotments that were made at San Antonito, under the direction of prefect Sandoval were invalid as against the government unless authority was given therefor or these acts subsequently ratified by lawful authority, neither of which appears to have been the case.

An attempt is made by the testimony of interested parties to supply the original authority to prefect Sandoval by statements that men were sent to Santa Fé to obtain the land, and received instructions to Sandoval to grant and allot the same. This testimony is unreliable and unsupported by anything that occurred. Assuming, for the purposes of the case, that the title papers introduced in evidence were competent, they clearly indicate that the petitioners for the grant applied first to Sandoval, prefect, and that he acted upon his own motion and authority, if any he had. It is hardly probable that Sandoval would have taken the action alleged in this case without reciting or making some mention of his specific directions thereto, if, as a matter of fact, the same had been given him by governor Armijo.

I have no doubt that the allotments were made as claimed, and that some of the people and their descendants have been living at San Antonito ever since, but I do not think they are entitled to a confirmation for the reasons above stated; and further, for the reason that such a confirmation would in no wise conform to the first subdivision of section 13 of the act of March 3, 1891, which prohibits the Court of Private Land Claims from allowing any claim which does not appear to be upon title lawfully and regularly derived from the government of Spain or Mexico, or from any of the States of the republic of Mexico having lawful authority to make grants of land, and one which, if not complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to

make perfect, had the territory not been acquired by this government, etc.

It is contended on behalf of the claimants that because congress has seen proper in the exercise of its discretion to confirm certain grants made by prefects, it therefore amounts to a legislative ratification of all acts performed with respect to these matters without previous authority therefor, and that this subsequent ratification by the United States through congress is of the same force as if done by preexisting power and relates back to the act done, and the case of *United States* v. *Arondondo* (6 Peters, 691) is cited as sustaining such contention. An examination of the case, as well as the citation, shows an overapplication of the principle announced, which was that congress by confirming the reports of the commissioners and other tribunals authorized by law to pass upon land grants, sanctioned the rules and principles on which they were founded, and no more. Such an action by congress in confirming these reports did not thereby authorize other tribunals, acting under specific authority from it, defining the rules and principles upon which they should act, to depart therefrom by reason of its former action. In the case of *Rio Arriba, etc., Co.* v. *United States* (167 U. S., 298), Cañon de Chama grant, it is held that such acts by congress are matters of grace and not matters of right; and hence, under the provisions of the act of 1891, they have no application in this case.

Counsel also seeks to sustain the action of the prefect, based upon paragraph 27 of the law of March 13, 1837. (Reynolds, 221.) This section of the law presupposes an

existing grant to the town in the district presided over by the prefect, and authorizes him to make distribution of the common lands, subject to the control of the governor and the departmental council, but nowhere can a law be found, to my knowledge, authorizing a prefect to initiate and make a direct grant of any kind to any individual, association of individuals, or corporation, for any purpose whatever.

It will be noticed by the petition for this grant that the land had been originally granted to one Cristobal Jaramillo, and that the same had been abandoned. I may state, when it appeared the land had been abandoned by Jaramillo, it was subject to regrant under the laws of the republic in relation to the disposition of the public lands, and that such regrant was a sufficient entry.

It is contended that this prefect, Antonio Sandoval, had acted as governor of the territory during the absence of governor Armijo, repelling the Texans in 1841. Without entering into this question, nothing appears in the record to show that Armijo was absent from the territory, nor does anything appear to show that Antonio Sandoval was attempting to act as governor, and I am satisfied that had he been assuming to act as such during the absence of Armijo such fact would have appeared affirmatively somewhere in the papers.

The grant is also sought to be sustained under the doctrine of prescription, and it is stated that the grantees and their legal representatives have been in possession of the tract for more than fifty-six years. During fifty of these years, however, whatever possession may have been held

was under the government of the United States, and forty-eight of these years have been since the treaty of Guadalupe Hidalgo. In this litigation we are called upon to adjudicate Spanish and Mexican land grants as they existed at the date of the treaty, and any rights which may have been acquired since that time were not acquired from Spain or Mexico, but from the United States, and are not subject to the jurisdiction of the Court of Private Land Claims, so that eight years' possession is the longest period we are authorized to consider in determining the validity of this grant. I do not understand that prescription or limitation can be invoked against the King or the government without some specific provision permitting the same, and I know of no law which permits the plea of prescription to be interposed upon the proof of possession for eight years only. The question might be asked whether or not in 1848, had the Mexican government sought to eject the settlers upon the San Antonito grant, these residents could have interposed their possession of these two thousand eight hundred varas for eight years as a plea of defense. If they could not have done so, it can not be successfully interposed here. Mr. Orosco, in his work on Legislation and Jurisprudence of the Public Lands of Mexico, edition of 1895, holds that the public lands form part of the public revenues, and therefore are imprescriptable.

It appears that under the decree of Sandoval, dated March 24, 1840 (R. 7), all that portion of said land which was unallotted should remain free for pastures and watering places to the public generally. Objection was

made to the introduction of the copy of the grant which had been transferred by Rumaldo Chavez to Gaspar Atencio, and it will be noted that this copy was not certified by the prefect or his secretary, nor by the justice. Rumaldo Chavez, who the evidence shows to have been the clerk of the justice, in making the copy, if he did, failed to copy the signatures of José Trujillo and his attending witnesses, if any he had, so that if the possession was formally executed and the *expediente* remained in the archives of the prefecture, it surely would have contained the signature of the officer executing the same, together with the attending witnesses. By reason of the peculiar endorsement of transfer of this instrument to Gaspar Atencio by Chavez, I am led to seriously doubt its *bona fides*, and especially as we are unable by any other archive evidence to verify any portion of the same. It would be a dangerous precedent in this litigation to hold that this document is competent evidence to prove a grant, when it can not in any way be verified. I can not conceive why the original grantees, particularly Gaspar Atencio and Juan José Garcia, should have been compelled to resort to an assignment of such an instrument to themselves as evidence of title when it is clear that if Sandoval made the grant, as alleged, and this instrument was transferred to Atencio prior to 1846, it might still have been verified by some signature of Sandoval, who, it was shown by the evidence, did not die until 1860 or 1861. The proper officials to execute the *testimonio* and deliver the same to the grantees as evidence of title were the officers of the prefecture; or

the justice of peace who delivered the possession might have done so, being thereunto duly authorized by an order of the granting officer. I have never seen an instrument authenticated by a clerk of a justice of the peace, a position unknown to the law.

I respectfully submit that the judgment of the Court of Private Land Claims is correct.

Respectfully submitted.

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Special Assistant to the Attorney-General.

JOHN K. RICHARDS,
Solicitor-General.